

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

XL SPECIALTY INSURANCE COMPANY,

Plaintiff,

v.

SILVER BAY LOGGING, INC.,

Defendant.

CASE NO. C06-881RSM

ORDER ON REQUEST FOR
EXPENSES

SILVER BAY LOGGING, INC.,

Counterclaimant,

v.

XL SPECIALTY INSURANCE COMPANY,

Counterdefendant.

This matter is now before the Court for consideration of defendant/counterclaimant's request for attorneys' fees and expenses pursuant to F.R.Civ.Proc. 37(a)(4)(A). The Court has reviewed defendants' declaration (Dkt. # 32), plaintiff's opposition (Dkt. # 34), and the documents relating to the underlying motion to compel (Dkt ## 16, 22, 23, 25, 26, and 30). For the reasons below, the Court declines to order the payment of fees and expenses.

ORDER ON REQUEST FOR EXPENSES - 1

1 When a motion to compel is granted, or if the disclosure is provided after the motion was filed,
2 the Court shall, after affording an opportunity to be heard, require the opposing party or attorney, or
3 both, to pay the reasonable expenses incurred in bringing the motion, unless the Court finds that the
4 opposition to the motion was substantially justified, or other circumstances make an award of expenses
5 unjust. F.R.Civ.Proc. 37(a)(4)(A). The Court finds that plaintiff's opposition to the motion to compel
6 was substantially justified, in that reasonable minds could disagree on plaintiff's obligation to produce Mr.
7 Kingston as a witness. Further, the fact that plaintiff was required to pay defendant's expenses in
8 attending Mr. Kingston's deposition in Texas makes a further award of sanctions unjust.

9 Dated this 13th day of December, 2007.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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